

## **Residency Guidance for Children of Deployed Parents in the Military**

The Vermont Department of Education has been asked to provide guidance to parents who are being deployed, and who wish to assign temporary guardianship, including education-related decision making, to someone other than the child's other parent. The Vermont Department of Education has collaborated with the Vermont National Guard's legal staff to issue the following joint guidance. This guidance is also being distributed to Vermont public school administrators, in the hope that a simple and uniform statewide practice will result.

NOTE HOWEVER: this guidance does not constitute legal advice in the traditional sense, since no attorney-client relationship is hereby created between the authors and the readers. Each deployed person's factual circumstances are different, and those factual circumstances will control the outcome of any legal steps which are taken by the deployed person. Also, even subtly different factual circumstances may well produce dramatically different outcomes, and as such, it is strongly recommended that each deployed person seek individualized legal advice from a properly qualified lawyer. General information may be obtained from your local school district's and/or supervisory union's administration.

### **General Rules Regarding Residence for Public School Purposes**

An individual who is temporarily absent from the State of Vermont due to a military commitment does not lose his or her Vermont residency during the period of temporary absence. As a result, during the period of the deployment, the child of a deployed parent may continue to attend the public school which serves the deployed parent's school district of residence. Also, if a deployed parent is divorced or separated, and the child's other parent is a resident of a different Vermont school district, the child may also attend, in the alternative, public school in the district of residence of the other parent.

The term "residence" is synonymous with the term "domicile." A person's domicile is his or her *primary* residence. Every person must have one domicile at any given time, and no person may have more than one domicile at any given time. When a person establishes a new domicile, which requires both moving into the new residence and intending to remain there indefinitely, the old domicile is automatically extinguished.

Deployments can create a variety of education-related residency questions. For example, if a parent is deployed, and the other biological parent of the child is deceased, the deployed parent may choose to have the child live somewhere else in Vermont with a relative or other third party. This situation may arise even if the other parent is *not* deceased, as long as the other parent agrees. While the child may continue to be enrolled in the school district of which the deployed parent is a resident, if the child is placed with a third party during the deployment, and if the third party lives in a school district from which it would be inconvenient for the child to continue attending school in the district of the deployed parent's residence, it may be in the best interest of the child to attend public school in the district in which the third party resides.

Under these circumstances, it is possible for the child to be deemed a resident of the third party's district, if a Vermont Probate Court has issued an order which formally designates the third party as the guardian of the child during the term of the deployment. In our opinion, a Vermont Probate Court order is necessary for this purpose, and the mere execution of a written power of attorney does not suffice.

The reader will note from the statute which is quoted below that this type of guardianship may not be created, “solely for the purpose of establishing a residence for school purposes.” For this reason, with respect to a particular set of facts, it is not possible to predict with confidence what a court would conclude if the third party residency were to be challenged. It is logical to assume that the likelihood that a court would uphold the validity of such a residential arrangement would improve to the extent that the guardian were, in fact, to exercise a significant degree of quasi-parental control over the child. Similarly, if a court were to conclude that the purpose of establishing the guardianship was purely to create public school residency, and that no meaningful quasi-parental supervision was being exercised by the guardian, the attempt to establish public school residency in this way would likely be invalidated. For example, if the child were 17 years old, and continued to live in the deployed party’s home, and if the activities of the child were not meaningfully supervised by the guardian, the arrangement would probably be found *not* to establish residency in the guardian’s school district.

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The key portion of the relevant Vermont law follows. Note in particular the underlined language:

## Title 14: Decedents' Estates and Fiduciary Relations

### Chapter 111: Guardianship

#### § 2645. Appointment of guardian

On petition of a minor or a person interested in the welfare of the minor, the probate court may appoint a guardian of the minor in the following cases:

- (1) When the minor has no parent living authorized to act as guardian; or
- (2) When the parent is under guardianship or shown to be incompetent or unsuitable to have the custody of the person of the minor; or
- (3) When the parent of the minor resides without the state and has so resided for three years and has not contributed to the minor's support during such time, provided the minor has resided in the state three years when the appointment is made. This clause shall not take away from the probate court the power to appoint a guardian as otherwise provided by law; or
- (4) When no parent objects and transfer of custody is in the best interest of the minor and is not solely for the purpose of establishing a residence for school purposes; or
- (5) When the minor has a parent living and the minor is the owner of real or personal property. Guardians appointed pursuant to this subdivision shall have the care and management of the estate of the minor but not custody of the minor, and the probate court's order shall so indicate.

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Probate Form 70 is used to petition for the appointment of a guardian under such circumstances. A copy of that form can be obtained from any Vermont Probate Court, and can be found at the following link:

<http://www.vermontjudiciary.org/eforms/Pc%20070.pdf>

For further information, contact your local Vermont Probate Court. Directions to, and contact information for, your local Vermont Probate Court can be found at the following link:

<http://www.vermontjudiciary.org/MasterPages/Fav-Courtdirections.aspx>